

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

FREEMAN M. FROTHINGHAM, JR., AS)
EXECUTOR OF THE ESTATE OF AND)
FOR USE AND BENEFIT OF THE)
STATUTORY BENEFICIARIES OF)
FREEMAN M. FROTHINGHAM, SR.,)
DECEASED,)
)
Plaintiff,)
)
v.) No. _____
)
GGNSC WINCHESTER, LLC d/b/a)
GOLDEN LIVINGCENTER-MOUNTAIN)
VIEW; GPH WINCHESTER, LLC; GGNSC)
EQUITY HOLDINGS, LLC; GGNSC)
CLINICAL SERVICES, LLC; GOLDEN)
GATE NATIONAL SENIOR CARE, LLC;)
GGNSC ADMINISTRATIVE SERVICES,)
LLC; GOLDEN GATE ANCILLARY, LLC;)
GGNSC HOLDINGS, LLC; 360)
HEALTHCARE STAFFING, LLC; GEARY)
REAL ESTATE HOLDINGS, LLC; AND)
DRUM INVESTORS, LLC,)
)
Defendants.)

NOTICE OF REMOVAL

Defendants GGNSC Winchester, LLC d/b/a Golden LivingCenter-Mountain View, GPH
Winchester, LLC, GGNSC Equity Holdings, LLC, GGNSC Clinical Services, LLC, Golden Gate
National Senior Care, LLC, GGNSC Administrative Services, LLC, Golden Gate Ancillary,
LLC, GGNSC Holdings, LLC and 360 Healthcare Staffing, LLC (collectively “the Defendants”)
submit this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, and state as follows:

1. On May 1, 2012, Plaintiff, Freeman M. Frothingham, Jr., filed a Complaint styled Freeman M. Frothingham, Jr., as Executor of the Estate of and for Use and Benefit of the Statutory Beneficiaries of Freeman M. Frothingham, Sr., Deceased v. GGNSC Winchester, LLC d/b/a Golden LivingCenter-Mountain View, GPH Winchester, LLC, GGNSC Equity Holdings, LLC, GGNSC Clinical Services, LLC, Golden Gate National Senior Care, LLC, GGNSC Administrative Services, LLC, Golden Gate Ancillary, LLC, GGNSC Holdings, LLC, 360 Healthcare Staffing, LLC, Geary Real Estate Holdings, LLC, and Drumm Investors, LLC, No. 2012-cv-18697, in the Circuit Court of Franklin County, Tennessee (the "State Court Action").

2. On or about May 8, 2012, service of process in the State Court Action was effected upon the Defendants. This Notice of Removal is filed within thirty (30) days after Defendants received a copy of Plaintiff's Complaint, as required by 28 U.S.C. 1446(b).

3. The Defendants file herewith as Collective Exhibit A copies of all pleadings heretofore filed in the State Court Action and served upon the Defendants.

4. This Court has jurisdiction over this cause under 28 U.S.C. § 1332 and 28 U.S.C. § 1441, et seq. There is complete diversity of citizenship between the parties, and there was complete diversity of citizenship between the parties at the commencement of the State Court Action. The Plaintiff, a Tennessee citizen, is a resident of Morrison, Warren County, Tennessee and resides at 1054 Caney Branch Road, Morrison, Tennessee 37357. No Defendant is a citizen of the state of Tennessee, as evidenced by the following¹:

(a) Defendant GGNSC Winchester, LLC d/b/a Golden LivingCenter - Mountain View is a Delaware limited liability company. Its sole member is GGNSC Equity Holdings, LLC; please see Paragraph 4(b) herein. Therefore, GGNSC

¹ See *Rolling Greens MHP, LP v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004) (holding that a "limited liability company is a citizen of any state of which a member of the company is a citizen").

Winchester, LLC d/b/a Golden LivingCenter - Mountain View is a citizen of Delaware and California.

(b) Defendant GGNSC Equity Holdings, LLC is a Delaware limited liability company. Its sole member is Golden Gate National Senior Care, LLC; please see Paragraph 4(d) herein. Therefore, GGNSC Equity Holdings, LLC is a citizen of Delaware and California.

(c) Defendant GGNSC Clinical Services, LLC is a Delaware limited liability company. Its sole member is Golden Gate National Senior Care, LLC; please see Paragraph 4(d) herein. Therefore, GGNSC Clinical Services, LLC is a citizen of Delaware and California.

(d) Defendant Golden Gate National Senior Care, LLC is a Delaware limited liability company. Its sole member is GGNSC Holdings, LLC; please see Paragraph 4(h) herein. Therefore, Golden Gate National Senior Care, LLC is a citizen of Delaware and California.

(e) Defendant GGNSC Administrative Services, LLC is a Delaware limited liability company. Its sole member is GGNSC Holdings, LLC; please see Paragraph 4(h) herein. Therefore, GGNSC Administrative Services, LLC is a citizen of Delaware and California.

(f) Defendant 360 Healthcare Staffing, LLC is a Delaware limited liability company. Its sole member is Golden Gate Ancillary, LLC; please see Paragraph 4(g) herein. Therefore, 360 Healthcare Staffing, LLC is a citizen of Delaware and California.

(g) Defendant Golden Gate Ancillary, LLC is a Delaware limited liability company. Its sole member is GGNSC Holdings, LLC; please see Paragraph 4(h) herein. Therefore, Golden Gate Ancillary, LLC is a citizen of Delaware and California.

(h) Defendant GGNSC Holdings, LLC is a Delaware limited liability company. Its sole member is Drumm Corp. f/k/a Drumm Investors, LLC; please see Paragraph 4(i) herein. Therefore, GGNSC Holdings, LLC is a citizen of Delaware and California.

(i) Defendant Drumm Corp. f/k/a Drumm Investors, LLC is a Delaware corporation with its nerve center in Plano, Texas. Therefore, Drumm Corp. f/k/a Drumm Investors, LLC is a citizen of Delaware and Texas.

(j) Defendant GPH Winchester, LLC is a Delaware limited liability company. Its sole member is Geary Property Holdings, LLC; please see Paragraph 4(k) herein.

(k) Defendant Geary Property Holdings, LLC f/k/a Geary Real Estate Holdings, LLC is a Delaware limited liability company, and none of its members are citizens of Tennessee.

5. In his Complaint, Plaintiff alleges that Freeman Frothingham, Sr. suffered malnourishment, pressure sores, neglect, other injuries and death as a result of Defendants' ordinary negligence, negligence per se, medical malpractice, and violations of the Tennessee Adult Protection Act. Although the Complaint does not allege a specific amount of damages, Plaintiff is seeking compensatory damages, punitive damages and attorney's fees. (Complaint, ¶¶ 104-07). The Tennessee Adult Protection Act entitles a successful claimant to the recovery of attorney's fees. Tenn. Code Ann. § 71-6-120. Thus, based on a fair reading of the State Court

Action Complaint, it is facially apparent that the damages sought by Plaintiff exceed the jurisdictional limit of \$75,000.²

6. Defendants file herewith as Collective Exhibit B copies of the notices of removal which are being sent to Plaintiff's counsel and to the Clerk of the Circuit Court of Franklin County, Tennessee, from whence this case is sought to be removed.

WHEREFORE, Defendants pray that this cause proceed in this Court as an action properly removed hereto.

² When a complaint does not allege a specific amount of damages,

the party invoking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount. The district court must first examine the complaint to determine whether it is "facially apparent" that the claims exceed the jurisdictional amount.

St. Paul Reinsurance Co., Ltd. v. Greenberg, 124 F.3d 1250, 1253 (C.A.5 (Tex.) 1998); *see also De Aguilar v. Boeing Co.*, 11 F.3d 55, 57 (C.A.5 (Tex.) 1993) (finding it "facially apparent" that a wrongful death claim and accompanying request for punitive damages exceeded the jurisdictional amount).

DATED: June 6, 2012.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

By: s/T. O. Helton

Heidi R. Hoffecker, BPR No. 017858

T. O. Helton, BPR No. 001929

Philip M. Meyer, BPR No. 029507

1800 Republic Centre

633 Chestnut Street

Chattanooga, TN 37450-1800

(423) 209-4161

*Attorneys for GGNSC Winchester, LLC
d/b/a Golden LivingCenter-Mountain View,
GPH Winchester, LLC, GGNSC Equity
Holdings, LLC, GGNSC Clinical Services,
LLC, Golden Gate National Senior Care,
LLC, GGNSC Administrative Services, LLC,
Golden Gate Ancillary, LLC, GGNSC
Holdings, LLC, and 360 Healthcare
Staffing, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail and Certified Mail, Return Receipt Requested. Parties may access this filing through the Court's electronic filing system.

Joe Dughman, Esq.
Joe Dughman & Associates
1812 Broadway
Nashville, TN 37203
Attorney for Plaintiff

Garry J. Rhoden, Esq.
The Rhoden Firm
Washington Square
1922 Exeter Road, Suite 12
Germantown, TN 38138
Attorney for Plaintiff

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

By: s/T. O. Helton
T. O. Helton